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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-720

UNITED TRANSPORTATION UNION, *Petitioner*,

v.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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In short, after considering the UTU's arguments based upon the Norris-LaGuardia Act (Tr. of January 7, 1972, pp. 6-8), the district court correctly struck "the balance in favor of maintaining the status quo to allow time for a meaningful judicial review" (422 F.2d at 985, Pet. App. B, p. A20) of its denial of an injunction, and the court of appeals correctly applied long-established principles in upholding the district court's exercise of its discretion in that regard.

CONCLUSION

For the reasons set forth above the petition for certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-789

UNITED TRANSPORTATION UNION, *Petitioner,*

v.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

This petition again seeks review of a question as to which the union unsuccessfully sought review earlier in this litigation*—whether a district court may enjoin a strike pending appeal following a determination by the court that the Norris-LaGuardia Act (29

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*No. 190, O.T. 1970, *United Transportation Union* v. *Chicago & N.W. Ry.*, 403 U.S. 904 (1971).

U.S.C. §§ 101 *et seq.*) bars injunctive relief on the merits.

In addition, the present petition seeks review of the further question whether on the facts of this particular case the district court abused its discretion in granting an injunction pending appeal after a determination by the court that this was "a case of first impression" presenting "substantial" issues.

STATEMENT

Respondent Chicago and North Western Railway Company ("C&NW") sued the United Transportation Union ("UTU") to enjoin a threatened strike, claiming that the UTU, in its negotiations with the C&NW, had not discharged its obligation under Section 2 First of the Railway Labor Act (45 U.S.C. § 152 First) to bargain in good faith—or, more precisely, to exert "every reasonable effort" to settle the dispute between the parties. The district court issued a temporary restraining order, but subsequently dismissed the complaint upon the grounds that the federal courts have no jurisdiction to decide claims under Section 2 First and that therefore the Norris-LaGuardia Act (29 U.S.C. § § 101 *et seq.*) bars injunctive relief. The district court acknowledged the existence of case law contrary to its decision, however, and accordingly issued an injunction pending the carrier's appeal, finding that (1) the union might strike the carrier if not enjoined pending appeal, (2) a strike would likely result in a mooting of the appeal, and (3) a strike would irreparably injure the carrier and the public. (Order of December 12, 1969).

The court of appeals affirmed the district court's holding that Section 2 First is not justiciable. *Chicago*

& N.W. Ry. v. *United Transportation Union,* 422 F.2d 979 (7th Cir. 1970), Pet. App. B, p. A8. But the court also affirmed the injunction pending appeal, rejecting the union's contention that the anti-injunction provisions of the Norris-LaGuardia Act bar injunctive relief pending appeal where the trial court has found that Norris-LaGuardia bars an injunction on the merits. In so holding, the court of appeals overruled its prior decision in *Elgin, J. & E. Ry.* v. *Brotherhood of R.R. Trainmen,* 302 F.2d 545 (7th Cir. 1962).[1]

Although affirming that the district court lacked jurisdiction of the case on the merits because of Norris-LaGuardia, the court of appeals stayed its mandate and left the injunction in effect pending the carrier's petition for certiorari (Orders of March 16 and April 3, 1970). This Court reversed on the merits, holding Section 2 First enforceable by strike injunction. 402 U.S. 570 (1971). On the other hand, this Court denied a cross-petition for certiorari by the UTU as to the injunction pending appeal. 403 U.S. 904 (1971).

On remand for trial on the merits the district court found that the union had not bargained in good faith as required by Section 2 First. The court accordingly enjoined a strike and ordered further bargaining. 330 F. Supp. 646, 648-651, 652 (N.D. Ill. 1971).

After further conferences between the parties the district court found that the union had negotiated in compliance with Section 2 First, had thereby exhausted the bargaining procedures of the Railway Labor Act, and was thus free to strike. 336 F. Supp. 1149, 1163,

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[1] The court noted that it had circulated its opinion overruling *Elgin* to the full active court and that no judge had requested a hearing *en banc.* 442 F.2d at 985 n.11a, Pet. App. B, p. A20.

1166-1169 (N.D. Ill. 1971). At issue were two questions as to the correct implementation of the Supreme Court's June 1971 decision in this case: (1) whether a party who has been found to have violated Section 2 First in initial conferences and mediation can exhaust the procedures of the Act without resort to mediation again at a time when it is bargaining in compliance with Section 2 First; and (2) what standards are to be applied in determining whether a party has satisfied the obligation of Section 2 First to "exert every reasonable effort" to settle disputes. Finding these questions "thorny," that this was a "case of first impression," and that a strike would irreparably injure the carrier and the public, the district court on January 10, 1972 issued another injunction pending appeal. Pet. App. E, pp. A35-38. The court's key findings were:

(1) the "issues involved in the [carrier's] appeal are substantial" and " ' this is a case of first impression' " (Finding of Fact No. 3);

(2) the "union may engage in a strike . . . if not enjoined therefrom pending appeal" (Finding of Fact No. 4);

(3) such a strike "likely would result in a mooting of the appeal," and the injunction "is necessary to maintain the status quo pending determination of the . . . appeal" (Findings of Fact Nos. 5, 6);

(4) a "strike . . . during the . . . appeal would irreparably injure the [carrier] and the public" (Finding of Fact No. 7); and

(5) the "balance of equities . . . favors the granting of an injunction pending appeal, because . . . the [carrier] and the public would suffer greater harm from a strike than the . . . union will suffer by being enjoined from striking

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[pending the] appeal" (Finding of Fact No. 8).

And the court made this Conclusion of Law (No. 2):

> "An injunction pending appeal should be issued in this case to permit the orderly determination by the Court of Appeals . . . of the [carrier's] appeal, because such appeal raises important issues concerning the future administration of the Railway Labor Act (45 U.S.C. §§ 151-160)."

To protect the union's interests in the matter, the court set bond at $1,000,000. Pet. App. E, p. A38 (Injunction ¶ 2).

The court of appeals reversed the district court on the merits and held that the union could not exhaust the procedures of the Act without further mediation in compliance with Section 2 First. In its appeal from the injunction pending appeal the union did not contend that the Norris-LaGuardia Act deprived the district court of jurisdiction to issue an injunction pending appeal.[2] The UTU argued only that the district court abused its discretion in granting the injunction and that it did not afford an adequate hearing on the issue.[3] The court of appeals nonetheless reaffirmed its earlier holding that the district court had jurisdiction

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[2] The union said, "We further submit that the Norris-LaGuardia Act, even though it does not prohibit such an injunction, is, nevertheless, to be considered in deciding the motion." Appellant's Br. p. 6.

[3] The adequacy of the hearing on the injunction pending appeal was confirmed by the court of appeals (Pet. App. A, p. A5), and the UTU has not raised the issue again in its petition to this Court. In fact, the UTU was given 15 days notice of the carrier's intention to move for an injunction pending appeal, and three separate hearings followed at which the UTU unsuccessfully argued against the injunction. See Tr. of January 6, 7, and 10, 1972.

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and stated that all the UTU's objections to the injunction were "completely answered by the holding of this court in the previous appeal in this case."[4] Pet. App. A, p. A4. The court further explained:

> "[T]his is as the District Court found 'a case of first impression' in which there are no precedential guidelines to follow and that presents a 'thorny problem' of explosive quality. In the light of these considerations, the 'balance of equities herein favors the granting of an injunction pending appeal . . . .' While the employees here are protected by a million dollar bond, neither the public nor the railroad have any protection from the irreparable injury that would flow from a strike." Pet. App. A, p. A4.

The UTU now seeks review by this Court of the jurisdictional issue in a petition virtually identical to that denied by this Court in 1971.[5] The UTU's petition also seeks review of the question whether the district court abused its discretion in granting the injunction pending appeal.

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[4] On the jurisdictional issue the court of appeals quoted this paragraph from its earlier decision in this case:

> " 'There is nothing in the text of the Norris-LaGuardia Act or in the legislative history surrounding the drafting and enactment of the Act indicating a Congressional intent to remove from the District Court their long recognized power to grant injunctions pending appeal. To remove from the District Courts the power to grant injunctions pending appeal . . . is to in effect make the District Court the court of last resort on these matters regardless of the difficulty or the novelty of the issues involved. In the absence of any specific Congressional intention . . . we decline to read into the Act such a serious limitation into the judicial review process.' At [422 F.2d] 984." Pet. App. A, p. A4.

[5] In a related petition the UTU also seeks review of the court of appeals' ruling on the merits. No. 72-558, *United Transportation Union* v. *Chicago & N.W. Ry.*

REASONS FOR DENYING THE WRIT

We show in this brief that the ruling of the court of appeals that Norris-LaGuardia does not bar an injunction pending appeal is in accord with the law in every other federal court which has considered the problem, including this Court; that the decision is correct as a matter of law; and that it comports with the dictates of reason and sound policy. The union's petition on this issue raises no considerations or authorities which were not present at the time of its first petition to this Court on the issue; indeed, the union's argument on the issue is nearly a carbon copy of its earlier petition. We also show that the district court's issuance of an injunction pending appeal was proper on the facts of this case.

1. When the first injunction pending appeal in this litigation was affirmed, 422 F.2d 979, Pet. App. B, p. A8, and the prior decision of *Elgin, J. & E. Ry.* v. *Brotherhood of R.R. Trainmen,* 302 F.2d 545 (7th Cir. 1962), overruled, the court of appeals brought the law of the 7th Circuit into accord with the practice of this Court and the other lower federal courts as well. As the court of appeals noted in its first opinion:

> "Although this issue has not been discussed in depth by other courts of appeals, the circuits which have been faced with the problem of district court injunctions pending appeal in a labor dispute have acted consistently with our decision in this appeal. See Missouri-Kansas-Texas RR. Co. v. Brotherhood of Railroad Trainmen, 342 F.2d 298 (5th Cir. 1965); Texas and N.O. RR. Co. v. Brotherhood of Railroad Trainmen, 307 F.2d 151, 153, 163 (5th Cir. 1962); Pan American World Airways v. United Brotherhood of Carpenters, 324 F.2d 217 (9th Cir. 1963; the district court, though denying

a preliminary injunction, granted a 10-day stay to preserve the status quo pending appeal to the Court of Appeals); Norfolk & P.B.L. RR. Co. v. Brotherhood of Railroad Trainmen, 248 F.2d 34 (4th Cir. 1957; the district court ordered the temporary injunction dissolved, though by supplemental order, the execution of the court's judgment was suspended pending appeal by the carrier)." 422 F.2d at 985, Pet. App. B, A19-20.

This catalog, moreover, which includes the Fourth, Fifth, and Ninth Circuits, is not complete. To it should be added the following:

a. *This Court.* In *Brotherhood of R.R. Trainmen* v. *Atlantic C.L. R.R.*, 362 F.2d 649 (5th Cir. 1966), the court of appeals ruled invalid under Norris-LaGuardia a district court's injunction. The carrier applied to Mr. Justice Black for an injunction pending disposition of a petition for certiorari. The matter was referred by Mr. Justice Black to the full Court, which granted the "application for reinstatement of the limited preliminary injunction" of the district court. *Atlantic C.L. R.R.* v. *Brotherhood of R.R. Trainmen*, 384 U.S. 967 (1966) (Stay order), 385 U.S. 20 (1966) (*affirming by an equally divided Court*). While the union raised no objections to the injunction on jurisdictional grounds, if the UTU's view of the reach of Norris-LaGuardia urged in the case at bar were correct, this Court would have been without jurisdiction to grant the injunction, for the construction of Norris-LaGuardia urged by the UTU admits of no discrimination among the levels of the federal judiciary.[6]

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[6] We understand the UTU's position to be that once the district court has decided on the merits that Norris-LaGuardia bars an injunction, *no* federal court can issue an injunction pending appeal.

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b. *The lower federal courts.* In addition to the cases cited by the court of appeals in its first opinion, which arose in the Fourth, Fifth, and Ninth Circuits, we have found cases in the District of Columbia, Second, and Eighth Circuits that accord with the decision below and are inconsistent with the position urged by the union. We have also discovered additional cases in the Fifth and Ninth Circuits.[7] In each of these cases the district court had decided that Norris-LaGuardia precluded plaintiff's claim for injunctive relief. Nevertheless, in each the court of appeals—or with respect to two of them, the district court in action noted without disapproval by the court of appeals—either granted an injunction pending appeal or stayed a mandate in circumstances where the result was to continue an injunction pending appeal. In at least one of them, moreover—as well as in the *Pan American World Airways* case cited by the court of appeals in its first decision—the *Elgin* decision was urged by the union in opposition to the motion for relief pending appeal.[8] The cases are as follows: *Brotherhood of R.R. Trainmen* v.

[6] [cont.]
A different position—one that would bar only the district court—would result in depriving of authority the court with intimate knowledge of the case and in investing that authority instead exclusively in courts more remote from the controversy. Contrast *Fed. R. App.*, p. 8(a). The UTU has not, as we have indicated, suggested that the Congress intended such a consequence in enacting Norris-LaGuardia.

[7] All the unreported orders and pleadings cited herein were also cited by the carrier in its brief to the court of appeals on the first appeal and in its Brief in Opposition to the UTU's first petition to this Court, so that the union has had ample opportunity to, but does not, challenge their authenticity.

[8] As to *Pan American*, 324 F.2d 217, 218 (9th Cir. 1963), see appellee's Memorandum of Points and Authorities in Opposition to Motion for Injunction Pending Appeal in the court of appeals, pp. 22-23. Thus, petitioner is in error in stating that "the union in those cases did not raise the point here involved" (Pet. p. 11).

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Atlantic C.L. R.R., 383 F.2d 225 (D.C. Cir. 1967) (Order of October 10, 1967, in No. 20,718), *cert. denied*, 389 U.S. 1047 (1968) (*Elgin* urged by union in Objection to Motion by Appellees for Stay of Mandate or of Transmission of Opinion and Certified Copy of Judgment, pp. 4, 5-6); *Chicago, R.I. & P. R.R.* v. *Switchmen's Union*, 292 F.2d 61 (2d Cir. 1961), *cert. denied*, 370 U.S. 936 (1962) (see Petition for Certiorari in No. 237, O.T. 1961, p. 9);[9] *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 99 F.2d 309, 317 (8th Cir. 1938); *Order of Ry. Conductors* v. *Spokane, P. & S. Ry.*, 366 F.2d 99 (9th Cir. 1966) (Order of October 27, 1966, in No. 20,331), *cert. denied*, 385 U.S. 1025 (1967); *Butte, A. & P. Ry.* v. *Brotherhood of Locomotive Firemen*, 268 F.2d 54, 57-58 n. 7 (9th Cir. 1959); *Brotherhood of R.R. Trainmen* v. *Central of Georgia Ry.*, 229 F.2d 901 (5th Cir. 1956) (Order of April 11, 1956, in No. 15,671), *dismissed as moot*, 352 U.S. 995 (1957).

2. The decision of the court below is correct. Because the first opinion of the court of appeals (422 F.2d at 983-985, Pet. App. B, pp. A15-20) so carefully analyzes the relevant considerations, we here merely summarize them very briefly. First, the power of the federal courts to enjoin the maintenance of the status quo pending appeal is inherent in the judicial power and was first codified by the "All Writs Act" contained

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[9] The union observes that the *Chicago, R. I.* case was cited by the Seventh Circuit as analogous precedent for its decision in *Elgin* (Pet. p. 8). But the briefs in *Elgin* disclose that no one had advised the Seventh Circuit that the Second Circuit in *Chicago, R.I.*, following its decision that the district court should not have issued an injunction because of Norris-LaGuardia, nevertheless stayed its mandate and kept that injunction in effect pending disposition of a petition for certiorari.

in Section 14 of the Judiciary Act of 1789, 1 Stat. 73, 81, *as amended,* 28 U.S.C. § 1651. *Scripps-Howard Radio, Inc.* v. *FCC,* 316 U.S. 4, 9-10 (1942); *Hovey* v. *McDonald,* 109 U.S. 150, 161 (1883). Second, absent Norris-LaGuardia at least, it is established that this power of the judiciary is unaffected by the fact that the lower court has denied relief on jurisdictional rather than on substantive grounds. *United States* v. *Shipp,* 203 U.S. 563, 573 (1906); *Pettway* v. *American Cast Iron Pipe Co.,* 411 F.2d 998, 1002-3 (5th Cir. 1969); *United States* v. *Brown,* 281 Fed. 657, 663 (8th Cir. 1922); *Eastern Greyhound Lines* v. *Fusco,* 310 F.2d 632, 634 (6th Cir. 1962); *J. Weingarten, Inc.* v. *Potter,* 233 F. Supp. 833, 838 (S.D. Tex. 1964). Third, in judging whether the Congress, by enacting the Norris-LaGuardia Act, intended to strip the courts of this important and traditional inherent power, only an unambiguous expression of such a purpose will serve. *Scripps-Howard Radio, Inc.* v. *FCC, supra,* 316 U.S. at 15. Fourth, as the court of appeals said in its first opinion,

> "There is nothing in the text of the Norris-LaGuardia Act or in the legislative history surrounding the drafting and enactment of the Act indicating a Congressional intent to remove from the district courts their long-recognized power to grant injunctions pending appeal." 422 F.2d at 984, Pet. App. B, p. A17.[10]

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[10] In *Elgin,* the court said that the term "temporary injunction" in Norris-LaGuardia covered an injunction pending appeal. 302 F.2d at 548. But in the context in which that term is used, it plainly enough refers only to preliminary injunctions. Thus, Sections 1 and 4 (29 U.S.C. §§ 101, 104) relate to "any restraining order or temporary or permanent injunction"—phrases of art commonly employed to cover only the actions taken by the district court prior to and including final judgment—temporary restrain-

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Finally, for the reasons set forth by the court of appeals in its first opinion (422 F.2d at 984, Pet. App. B, pp. A18-19), the decision of this Court in *United States*

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[10] [cont.]
ing orders, preliminary injunctions, and permanent injunctions. See also Section 10 of the Act (29 U.S.C. § 110) which, in prescribing the appellate procedure respecting "temporary injunctions," was designed to cover actions relating to preliminary injunctions, not injunctions pending appeal.

If there were any doubt about the point, that doubt would be resolved by examination of the legislative history referred to by the court below in its first opinion. In all the hearings, reports, and debates, we have been unable to discover—and the union has never cited—a single reference to the power of the federal courts to issue injunctions pending appeal. And that legislative history is extensive indeed. Anti-injunction bills were introduced as early as 1925. S. 972 (Shipstead), 67 *Cong. Rec.* 608, 69th Cong., 1st Sess. (1925). Thereafter until passage of the Act in 1932 there were three separate series of hearings, five committee reports, and extensive floor debate. See "Limiting Scope of Injunctions in Labor Disputes," *Hearings before the Senate Committee on the Judiciary on S. 1482*, 70th Cong., 1st Sess. (1928); "Defining and Limiting the Jurisdiction of Courts Sitting in Equity," *Hearings before the Senate Committee on the Judiciary on S. 2497*, 71st Cong., 2d Sess. (1930); *S. Rep. No. 1060* (with minority views), 71st Cong., 2d Sess. (June 18, 1930); "Defining and Limiting the Jurisdiction of Courts Sitting in Equity," *Hearings Before the House Committee on the Judiciary on H.R. 5315*, 72nd Cong., 1st Sess. (1932); *S. Rep. No. 163* (with minority views), 72nd Cong., 1st Sess. (February 4, 1932); *H. Rep. No. 669*, 72nd Cong., 1st Sess. (March 2, 1932); *H. Rep. No. 793* (Conference), 72nd Cong., 1st Sess. (March 14, 1932); *H. Rep. No. 821*, 72nd Cong., 1st Sess. (March 16, 1932); *Senate Debates and Remarks*, 72nd Cong., 1st Sess., 75 *Cong. Rec.* 202, 3370-3372, 4052-4053, 4502-4511, 4591, 4616, 4618-4630, 4676-4696, 4702, 4754-4780, 4907, 4914-4920, 4927-4939, 4988, 4996-5019, 5527-5528, 5549-5552, 5950-5952, 6188-6189, 6308, 6327-6329, 6448-6455 (1931-1932); *House Debates and Remarks*, 72nd Cong., 1st Sess., 75 *Cong. Rec.* 96, 368, 5143, 5462-5515, 5560, 5720, 6014, 6017, 6240, 6282, 6334-6337, 6493, 6494, 6690 (1931-1932).

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v. *United Mine Workers*, 330 U.S. 258, 289-93 (1947), supports the decision below.[11]

3. The history of this litigation illustrates in concrete fashion the policy considerations that support the rule announced by the court of appeals. The initial ruling by the district court against the C&NW that federal courts lack authority to enforce Section 2 First of the Railway Labor Act was ultimately reversed by this Court. Moreover, on remand the district court actually found, as the carrier had contended, that the union had violated Section 2 First. Without an injunction pending appeal a strike by the union would have inflicted such serious damage to the carrier that—as the district court found (*supra* p. 2)—it probably would have had to abandon its appeal and settle upon the least destructive terms it could secure, without the conferences and mediation which have subsequently been held to be required. Similarly, the latest holding of the district court on the merits, that a violation of Section 2 First can be cured without submitting in good faith to mediation, has now been reversed by the court of appeals. Again, as the district judge found (*supra* p. 4), a strike by the union after the decision of the district court would have "irreparably injure[d] the

[11] The UTU's notion that *Mine Workers* "is, in fact, contrary to the *ratio decidendi*" of the decision below (Pet. p. 7) is frivolous. It is true, of course, as the union says, that in *Mine Workers* this Court held that the Norris-LaGuardia prohibitions do not apply where the federal government is the employer (Pet. pp. 7-8). But the Court also held, as the lower court in its first opinion pointed out (422 F.2d at 984, Pet. App. B, p. A18), that the district court's restraining order would have been valid even if it were subsequently determined that Norris-LaGuardia barred injunctive relief on the merits, because the district court had the power to preserve the status quo pending resolution of the jurisdictional issue posed by Norris-LaGuardia. See 330 U.S. at 289-93.

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[carrier] and the public" and "likely . . . result[ed] in a mooting of the appeal." The interests both of equity and of sound judicial administration of the Railway Labor Act would be subverted by making the district court, as the court of appeals put it, "the court of last resort on these matters regardless of the difficulty or novelty of the issues involved." 422 F.2d at 984, Pet. App. B, p. A17.

4. The district court's injunction pending appeal met the applicable standards set out in the court of appeals' first decision in this litigation and in this Court's decision in *Virginian Ry.* v. *United States*, 272 U.S. 658, 672-674 (1926).

a. *The standards to be applied.* The court of appeals below said that the UTU's objections to the injunction "were completely answered by the holding of this court in the previous appeal in this case." Pet. App. A, p. A4. In its earlier opinion the court mentioned four factors in justification of the injunction. First, the district court "recogniz[ed] that there was case law contrary to its decision." 422 F.2d at 982, Pet. App. B, p. A14. Second, "a strike would result in a mooting of the appeal" (*id.*). Next, " 'a strike would irreparably injure the plaintiff and the public' " (*id.*). Finally, considering the "difficulty [and] novelty of the issues involved," the district court should not be "the court of last resort," but rather, the status quo should be maintained "to allow time for meaningful judicial review" (*id.* at 984, 985, Pet. App. B, pp. A17, 20).

The foregoing criteria are consistent with those enunciated by Mr. Justice Brandeis in *Virginian*. Beyond irreparable harm, "additional facts must be shown" respecting the issues to be litigated on appeal.

272 U.S. at 673. Either the district court may entertain "a serious doubt as to the correctness of its own decision"; *or* its decision may depend "upon a question of law on which there is a conflict among the . . . circuits"; *or* "some other special reason exists." *Id.* at 673. Thus, an injunction is not ordinarily appropriate where the issues are "simple," are not "novel," and are not subject to "reasonable doubt." *Id.* at 674. This Court explained that in that case the district judge wrote no opinion, despite "the importance of the litigation," which the Court interpreted as a "declaration" by the district court that

> "the questions presented for judicial determination appeared to be simple; or, at all events, that the case did not involve the determination of any question of law which was novel or as to which there was, or could be, reasonable doubt." *Id.*

b. *Application of the standards to the injunction in this case.* Whether or not the lower courts correctly applied established principles of law to the particular facts of this case is hardly an issue of general importance which this Court should review. In any event, no error was committed by the lower courts in determining that an injunction pending appeal was justified under those established principles.

The district court's finding that a strike would cause irreparable injury to the carrier and to the public is not subject to question, and while the union does dispute (Pet. pp. 12-13) the district court's finding that a strike probably would moot the appeal, arguing that the appeal would not be mooted even should the carrier be coerced by the strike into settling the underlying labor dispute, this Court has held that an agreement settling the underlying labor dispute does moot a con-

troversy concerning the validity of a strike injunction. *Local No. 8-6, Oil Workers Unions* v. *Missouri,* 361 U.S. 363 (1960). See, also, *Harris* v. *Battle,* 348 U.S. 803 (1954), as explained in *Division 1287, Amalgamated Ass'n of Street Employees* v. *Missouri,* 374 U.S. 74, 77-78 (1963).[12] The district court's finding that the "balance of equities" favored an injunction pending appeal because the carrier and the public would suffer greater harm from a strike than the union would from being enjoined pending appeal is obviously also correct, particularly in view of the protection afforded to the union by the $1,000,000 bond.

To use the words of this Court in *Virginian,* the district court entertained "a serious doubt as to the correctness of its own decision." The district judge on a number of occasions expressed his view that this was a "case of first impression" (*e.g.,* 336 F. Supp. at 1164; Tr. of November 19, 1971, p. 315; Tr. of December 22, 1971, p. 2; Tr. of January 10, 1972, p. 5) and observed that his decision ought to be reviewed by higher courts (*e.g.,* Tr. of October 27, 1971, p. 7; Tr. of December 22, 1971, p. 2; Tr. of January 7, 1972, pp. 8-10, 12). Thus, he found that the "issues involved in the [carrier's] appeal are substantial" and that "' this is a case of first impression' " (*supra* p. 4). The court of appeals agreed that the case on the merits was one of first impression (Pet. App. A, p. A4), and its reversal demonstrates that the district judge was justified in entertaining a serious doubt as to the correctness of his decision.

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[12] The probability that a strike pending the appeal would moot the appeal is not, of course, essential to the granting of an injunction pending appeal, but it is an additional factor in favor of such an injunction which is entitled to consideration in balancing the equities.

In short, after considering the UTU's arguments based upon the Norris-LaGuardia Act (Tr. of January 7, 1972, pp. 6-8), the district court correctly struck "the balance in favor of maintaining the status quo to allow time for a meaningful judicial review" (422 F.2d at 985, Pet. App. B, p. A20) of its denial of an injunction, and the court of appeals correctly applied long-established principles in upholding the district court's exercise of its discretion in that regard.

CONCLUSION

For the reasons set forth above the petition for certiorari should be denied.

Respectfully submitted,

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